Order 99-3-18

Served: March 23, 1999

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 23rd day of March, 1999

In the matter of the revocation of the certificate of public convenience and necessity issued to **KIWI INTERNATIONAL HOLDINGS, INC. d/b/a KIWI INTERNATIONAL AIR LINES, INC.** under 49 U.S.C. 41110(e)	**Docket OST-97-2684**

ORDER TO SHOW CAUSE

Summary

By this order, we tentatively find that Kiwi International Holdings, Inc. d/b/a Kiwi International Air Lines, Inc. (Kiwi) has failed to demonstrate that it continues to be fit, willing, and able to conduct certificated air transportation operations, and we propose to revoke its section 41102 certificate.

Background

Kiwi, headquartered in Newark, New Jersey, was incorporated in March 1992. By Order 92-7-25, July 21, 1992, Kiwi was found fit, and by Order 92-9-67, September 29, 1992, Kiwi was issued effective certificate authority to perform interstate scheduled passenger service. The carrier commenced operations under that authority with Boeing 727-200 aircraft providing scheduled passenger service between Newark and Atlanta, Orlando, Chicago, and Fort Lauderdale.

In September 1996, Kiwi filed for Chapter 11 bankruptcy protection, and soon after suspended the scheduled passenger service portion of its operations while continuing its charter passenger operations. Kiwi resumed scheduled passenger service in October 1996.

In 1997, Kiwi International Holdings, Inc. (KIH) was formed by Dr. Charles C. Edwards, an orthopedic surgeon and businessman, for the purpose of acquiring Kiwi's assets. On July 23, 1997, the bankruptcy court approved Kiwi's asset sale to KIH and, subsequently, the Department orally approved a transfer of Kiwi's section 41102 certificate to KIH (hereinafter Kiwi) after determining that Kiwi, under its new ownership, continued to be fit to operate. We confirmed that oral action in Order 98-4-31, April 30, 1998, and reissued the subject certificate to reflect this transfer.

49 U.S.C. 41110(e) provides that the fitness requirement for certificated air carriers is a continuing one, and empowers the Department with the responsibility for monitoring continuing fitness. That section further provides that the Department may, after notice and hearing, modify, suspend, or revoke a carrier's certificate authority for failure to comply with the continuing fitness requirement. For the reasons discussed below, we have become increasingly concerned about Kiwi's fitness over the past several months, and can no longer conclude that the carrier meets the continuing fitness requirement of the statute. Therefore, we have tentatively determined that its operating authority should be revoked for lack of continuing fitness under the requirements of section 41110(e).

We will, however, give interested persons an opportunity to show cause why we should not make final the tentative findings and conclusions contained herein. Further, during this period, should Kiwi adequately address the fitness concerns that have led us to our tentative conclusion, we will reconsider whether to revoke the carrier's authority.

FITNESS

There are three areas of inquiry that the Department reviews when deciding whether a carrier is or continues to be fit. These areas are whether the carrier (1) has a management team with adequate experience and technical ability to conduct its air transportation operations; (2) has access to sufficient financial resources to support its operations without posing an undue risk to consumers or their funds; and (3) has demonstrated a willingness to, and does indeed satisfactorily comply with, all applicable laws and State and Federal regulations. To be found fit, a carrier must meet all three fitness standards.[1]

Based on information we have received from Kiwi, the Federal Aviation Administration, various airport authorities, as well as other materials available to us, we believe that Kiwi no longer meets any part of the fitness test. We will first address the carrier's financial fitness because we have serious concerns regarding its ability to continue to conduct operations without posing undue risk to consumers, and we believe that Kiwi's other problems stem in large part from its current financial situation.

---

[1] *See* Order 94-4-8, April 5, 1994, *ATX, Inc. Fitness Investigation*.

Financial Position

<u>Background</u>

In late 1998, we learned that Kiwi was again not making timely payments for fees and services to its airports. Kiwi had failed repeatedly to properly remit payment of Passenger Facility Charges (PFCs), in addition to other fees, to the Port Authority of New York and New Jersey for service into Newark International Airport. Kiwi owed the Port Authority approximately $230,000 in unpaid PFCs.[2] A check with five other airports that Kiwi served (Chicago/Midway, West Palm Beach, Buffalo/Niagara Falls, Miami, and San Juan) revealed that Kiwi owed those airports over $275,000 in PFCs, in addition to other fees for services.

A review of Kiwi's financial condition at the time showed that Kiwi was continuing to incur substantial losses in its operations. For the 9 months ended September 30, 1998, Kiwi reported an operating loss of $13.1 million and a net loss of $13.4 million. This was the ninth straight quarter that Kiwi had reported operating and net losses. Kiwi's balance sheet showed that the carrier had $13.5 million in current assets, $32.1 million in current liabilities, negative working capital of $18.6 million, negative retained earnings of $24.5 million, and negative stockholders' equity of $4.0 million.

On December 9, 1998, we sent Kiwi a letter instituting a continuing fitness review as a result of our concerns about the carrier's PFC arrearages and the implications for its fitness. Because of the seriousness of Kiwi's situation, we requested that the carrier meet with Department staff members to discuss whether it remained fit to hold its certificate authority.

On December 21, 1998, Dr. Charles Edwards, Kiwi's Chairman and owner, met with Department staff to discuss the carrier's current situation and PFC arrearages. At that meeting, Dr. Edwards acknowledged that the carrier did owe a substantial amount of PFCs to several airports and indicated that he understood the responsibility of Kiwi to make full and timely payments of PFCs. However, he further indicated that the carrier's first priority would be to honor its other payment obligations, such as salaries, aircraft leases, and fuel, before remitting any PFC payments. Dr. Edwards provided a list of pending actions and outstanding judgments against Kiwi. That list showed that various Kiwi creditors were seeking to recover approximately $1.8 million in fees.[3]

---

[2] This amount was in addition to approximately $300,000 that Kiwi owed to the Port Authority for various flight fees.

[3] Dr. Edwards stated that Kiwi had asserted a counterclaim in one of these actions and was making payments on two of the outstanding judgments. Dr. Edwards also provided a list of Kiwi's accounts payable that, as of December 3, were 120 days past due. These past-due accounts totaled nearly $3 million. Further, Kiwi's failure to make prompt payment of fees owed continues to result in legal actions against it. On March 17, 1999, the law firm that represented Kiwi between June 1997 and March 1998 filed an action against the carrier for failure to pay more than $200,000 in legal fees.

On January 8, 1999, we sent Kiwi a letter in which we reiterated the carrier's responsibility to remit payment of its PFCs and the profound consequences of the carrier's continued failure to do so. Kiwi was advised that, as a matter of Federal law, PFCs collected from the traveling public were not company revenues to be used in meeting other payment obligations, but were to be collected and held in trust and then remitted to the appropriate airports; and that failure to remit collected PFCs would constitute the conversion of trust proceeds to unauthorized purposes and could result in enforcement action and/or criminal prosecution by the Department. We further advised the carrier that, within 30 days, we intended to recheck with each of the airports that Kiwi served to ascertain the status of its PFC payments.

On February 8, we began checking with each of the airports into which Kiwi operated, and were advised by officials at those airports that the carrier continued to have serious current, as well as past, PFC remittance delinquencies. In fact, the overall situation had worsened rather than improved. According to the information gathered as of February 19, Kiwi owed more than $750,000 to the airports into which it operates or operated.

Kiwi's year-end reports revealed that its financial condition has continued to deteriorate. It reported an operating loss for the calendar year of $19.8 million and a net loss of $20.6 million. Current assets were $11.9 million, current liabilities were $35.3 million, for a negative working capital position of $23.5 million. Retained earnings were a negative $31.5 million and stockholders' equity was a negative $10.8 million.

Due to its financial condition, Kiwi has been placed on prepayment plans at four of the airports where it operates: Newark, Miami, West Palm Beach and Orlando. It recently lost its contract for ground services at Newark and lost its flight training facility in Atlanta. The carrier has also been threatened with eviction from its gate and terminal space at its operating base in Newark because of non-payment of its leases. In February, the carrier returned two of its B-727 aircraft to the lessor as it was unable to purchase these aircraft as originally planned and required by the terms of the lease. In early March, one of the carrier's engines was returned to the lessor unexpectedly, leaving Kiwi with only three operational aircraft.[4] Further, Kiwi has no spare engines in its inventory nor does it have a contract for a supply of engines should one of its engines fail. As a result, every time the carrier experiences an engine problem requiring a replacement, Kiwi must search the open market for a new engine or cannibalize an engine from another aircraft in its fleet.

During the past six months, the carrier has made a number of changes to its flight schedule, and has entered and exited a number of markets including Boston (Logan International) and Chicago (Midway) where it has been reported that there were unresolved issues over non-payment of airport fees.[5]

---

[4] Until Kiwi could find another engine, the aircraft remained out of service, causing delays in its revenue flights with resulting passenger disruptions.

[5] Other cities where Kiwi has dropped all service during the past six months include Atlanta, Detroit, Flint, and Minneapolis.

On March 1, 1999, we sent Kiwi another letter in which we advised it of our continuing serious concerns over its fitness to operate, and placed the carrier on notice that, absent immediate corrective actions by Kiwi, the Department intended to initiate steps toward the revocation of Kiwi's economic operating authority. We advised the carrier that its failure to honor its PFC payment obligations, coupled with numerous other matters, appeared to suggest a pattern of managerial, financial, and compliance deficiencies. We specifically noted Kiwi's continued substantial financial losses; its repeated failure to make timely payments for the lease of gates and other facilities at its primary hub in Newark; its recent loss of a number of key technical management personnel; its reliance on off-site senior management; its failure to appoint a permanent, on-site President and Chief Executive Officer; its substantial and growing number of consumer complaints; its loss of two of its B-727 aircraft; and its unstable business plan.

We advised Kiwi that, at a minimum, it must (1) designate an individual to be given full and complete authority over all day-to-day operations of the airline including the prompt payment of debt obligations; (2) establish an escrow account into which all PFCs collected by the carrier must be deposited until they are released to the appropriate airport authority, and negotiate agreements with each airport for the payment in full of back PFCs; and (3) develop a schedule of the carrier's capital needs through the remainder of the year, and provide evidence of commitments for the provision of such funds.

On March 8, Dr. Edwards and other representatives from Kiwi met with the Department's staff to discuss Kiwi's current situation. Dr. Edwards indicated that he had hired a turnaround specialist, Mr. Eugene Gillespie, who was on board at Kiwi full-time, and that several candidates were being considered for the position of President. Dr. Edwards also indicated that he had hired or was interviewing other individuals for key technical positions at the carrier.

Dr. Edwards further stated that Kiwi had re-evaluated its flight schedule, and intended to serve six cities (Newark, Miami, Orlando, West Palm Beach, San Juan, and Aguadilla) with a total of 16 round trips each weekday and 14 round trips on Saturdays and Sundays using four B-727 aircraft. Dr. Edwards presented a breakeven monthly profit and loss forecast based on this level of operation. Dr. Edwards also provided information on possible sources of financing for Kiwi.

Analysis

Based on our analysis of Kiwi's current financial condition and the forecasts and other information it has provided, we can no longer conclude that Kiwi has the financial resources necessary to continue to meet our fitness standard.

Kiwi's financial condition has fallen to a level that places an undue burden on the Federal government to assure the necessary performance of safe and reliable operations. It lost $20.6 million in 1998 and $19.9 million in 1997. Since then, the carrier has incurred additional losses from its operations, thus its financial condition continues to deteriorate.

Without the availability of substantial additional cash investment, Kiwi will not be able to continue as a going concern. It reported negative working capital as of December 31 of $23.5 million, and its projected cash needs for the next six weeks are at least $3.5 million. It has already been placed on a cash basis at its Newark hub and at three other points that it serves, and lost its flight training facilities and a ground handling contract. The carrier has no spare aircraft engines, and has been threatened with the loss of its gate and terminal facilities at its primary hub in Newark.

Kiwi's response thus far has consisted of attempts to reevaluate its route system and to obtain new investment capital. The latter initiative is imperative, but has not been successful.

While Kiwi has provided some documentation on various proposals to obtain additional equity or debt capital, most of the proposals were in the preliminary stage or were subject to numerous conditions. These included the completion of due diligence, the cooperation of creditors and suppliers (that would still need to be negotiated), the declaration of bankruptcy, the relinquishment of management control, or the provision of substantial collateral by Dr. Edwards personally. In addition, most of the sources proposed initial funding of only $1 to $3 million which would not be adequate to cover even the immediate cash needs of the carrier as it has projected them. At this time, we have no assurance that any of these proposals will come to fruition, and the seriousness of Kiwi's cash shortfall dictates that the Department not await such contingent developments before initiating the action we are taking in this order.

Kiwi's attempts in the short term to rationalize its route system will do little, if anything, to ease the financial crisis. Our analysis, in fact, is that the carrier is more likely to continue to incur additional operating losses, especially after the Easter holiday surge that characterizes its markets.

Kiwi recently provided a forecast in which it estimates that its breakeven load factor is 70 percent. Its most recent bookings reflect peak-season load factors through the Easter holidays of 60 to 70 percent, and post-season load factors substantially lower. Thus, it appears that the carrier's near-term operating results will exacerbate, rather than ease, its cash shortage.

In the same context, Kiwi also provided an estimate of its cash requirements for the six-week period beginning March 7 and ending April 10. The carrier indicated that these cash requirements are above and beyond those covered by its forecast revenues for the same period. It separated its cash requirements for this period into two categories: "essential payables" which total $2.7 million and "optional items" which total $820,000. Included in the optional category are costs for obtaining three new aircraft engines and repairing another engine.[6]

[6] Kiwi does not identify what it considers to be "essential payables." Thus, it is not clear whether these include the airport fees and PFCs that certain airports have demanded be paid upfront in order for Kiwi to continue to operate to those airports.

Not only does Kiwi project a total cash shortfall for this six-week period of $3.5 million but that figure is based on a revenue and expense forecast that we find to be overly optimistic. If the revenues were based on Kiwi's January experience and the expenses were based on the fourth quarter 1998 average, Kiwi would experience an additional cash shortfall of $1.4 million in just a six-week period.[7]

Under these circumstances, absent a substantial and immediate infusion of capital resources, we tentatively conclude that Kiwi no longer has the necessary financial resources to continue its operations without posing an undue risk to consumers and their funds.

Managerial Competence

Background

We last reissued Kiwi's certificate in April 1998 to reflect the transfer of authority from the bankrupt Kiwi to Kiwi International Holdings under Dr. Edwards' ownership and control. With one exception, none of the individuals that we listed in that order as holding key management positions continue to be employed by Kiwi.[8] In November 1998, the carrier's President/Chief Executive Officer resigned. Mr. James Player, Kiwi's Chief Financial Officer, was appointed acting President, but he has also recently resigned.[9] Kiwi has lost other senior management personnel, including the Director of Operations, who resigned in August; the Director of Maintenance, who left in January; the Chief Pilot, the System Director of Maintenance and Engineering, the Director of Security, and the Director of Out Stations, all of whom resigned in February; and the Director of Quality Assurance, who resigned in March.

Currently, Kiwi's management team consists of Dr. Edwards, who is serving as acting Chief Executive Officer[10]; Mr. Eugene Gillespie, a certified turnaround professional manager who is serving as acting President; Mr. Borre Thoresen, who is serving as Vice President of Maintenance; Mr. Stan Brown, who is serving as Vice President of Marketing and Operations; Mr. Thomas Hayes, who is serving as Manager of Quality Control; Mr. William Machauer, who is serving as Director of Safety; Mr. George A. Zupko, who is serving as Chief Pilot; and Mr. James MacDermitt, who is serving as Director of

---

[7] This figure is based on Kiwi's January 1999 load factor of 64 percent and its fourth quarter 1998 average block hour cost of $5,042. All other assumptions made by Kiwi remain unchanged, including Kiwi's proposed operation of four aircraft, when in fact the carrier is currently only operating three.

[8] In Order 98-4-31, we listed the following as holding key management positions: Jerry Murphy, President and Chief Executive Officer; Daniel Chain, Director of Quality Assurance and Engineering; Steven Markhoff, General Counsel; James Hensen, Director of Operations; Joseph Tams, Chief Pilot; John Matera, Director of Maintenance; Andrew Brixner, Director of Safety; and Scott Held, Director of Flight Training. Mr. Held is the only member of the management team who still holds his position with Kiwi.

[9] Mr. Player apparently resigned his positions with Kiwi on March 17.

[10] However, Dr. Edwards is a practicing surgeon, and, in addition to managing his other business interests, performs his airline functions from his home in Baltimore, Maryland, rather than at the carrier's New Jersey headquarters.

Maintenance. In addition, Mr. Henry T. Stroman is serving as Director of Operations but he has resigned this position as of April 1. Kiwi is also interviewing individuals to serve as President and in other key positions.

Analysis

We are no longer confident that Kiwi's management team is in a position to effectively and adequately direct the carrier's operations. The complete turnover in management personnel in less than a year is symptomatic of an unstable organization and the fact that the most senior positions remain without permanent replacements prevents continuity in making operational decisions. The carrier has made important new hires of key technical personnel who fully meet the qualifications for their positions. These hires, as well as the employment of Mr. Gillespie as a turnaround consultant, are positive developments. However, it appears that the new management-level hires must spend much of their time familiarizing themselves with the carrier's personnel, operations and procedures, leaving little time to provide knowledgeable direction to employees or to resolve problems. Of particular concern has been the complete change in Kiwi's senior maintenance staff since the beginning of this year.

In addition, prior to becoming involved with Kiwi, neither Dr. Edwards, who is the acting Chief Executive Officer, nor Mr. Player, who served as the carrier's President for the last five months, had any aviation management experience. Moreover, Dr. Edwards, who appears to be making most of the major decisions for the carrier, is not serving Kiwi on a full-time basis, and he is not on site at the carrier's headquarters. While the hiring of Mr. Gillespie is a positive move, he, too, has no prior experience in managing an airline.

Recent events at Kiwi, while driven by its poor and declining financial situation, also reflect negatively on the carrier's management capabilities. Kiwi's management has allowed the carrier to lose critical pilot training facilities, and the carrier no longer maintains spare engines for its aircraft. Further, its inadequate attention to financial responsibilities has had dire ramifications, including repeated threats of eviction from its gate space at its primary operations base, and non-payment of PFCs despite our warning about the consequences of this action. In addition, Kiwi's random entry and exit to and from markets has been disruptive to consumers and employees, and has exacerbated the instability of its operations.

In summary, the carrier continues to experience a large turnover in top management personnel, it has no permanent President or Chief Executive Officer in place, and the individuals acting in those positions do not have requisite aviation background and experience. Such lack of experience would be less critical if these individuals were backed by a strong management team who had worked together for some time and were thoroughly familiar with the carrier's operations. Unfortunately, they are not. Under these circumstances, we tentatively conclude that Kiwi does not have a management team with the necessary background and experience to continue to conduct its operations safely and reliably without placing an unduly burdensome oversight responsibility on the Department and the FAA.

Compliance Disposition

Background

Kiwi's continued failure to remit collected PFCs to the appropriate airport authorities was one of the reasons we began a continuing fitness review of the carrier last November.[11] As Kiwi has been advised on several occasions, PFCs are not company revenues to be used in meeting other payment obligations but are trust funds to be promptly remitted to the airports on whose behalf they were collected as required by the Department's rules.[12] Despite these warnings, Kiwi's PFC arrearages as of February 28 amounted to over $612,000. [13]

Kiwi's operational and service problems are also reflected in the growing number of consumer complaints that we have received. During 1997, the Department received 93 complaints regarding Kiwi's flight operations, reliability, and refund payments. In 1998, the number grew to 209, an increase of 125 percent. During the first two months of 1999 (through February 22), the Department received 92 complaints against Kiwi. If that pace were maintained for a full year, it would be an annualized rate of 634 complaints. Kiwi's complaints per 100,000 passengers carried thus increased from 15.5 in 1997 (when it carried 627,174 passengers) to 32.6 in 1998 (when it carried 641,069 passengers), and to even higher rates in January and February of this year.[14]

Of even greater importance, we have been advised by the FAA personnel charged with monitoring Kiwi's safety compliance that, because of concerns over the carrier's financial condition and its high turnover in management, the FAA has had to increase its surveillance of the company's operations. This heightened surveillance has resulted in the FAA's spending a disproportionate amount of its resources on monitoring Kiwi's operations to ensure the carrier's continued compliance with FAA's regulatory requirements and with Kiwi's own approved policies and procedures. This heightened intensity of surveillance has also resulted in Kiwi's having to take corrective action in a

[11] Under 49 U.S.C. 40117 and FAA regulations (14 CFR Part 158), the Department has established a PFC program under which public agencies controlling airports can charge enplaning passengers a PFC, providing funds to expand the national airport system. The Secretary authorizes PFCs to be collected and regulates the manner in which amounts are held and dispersed. Airlines are required to collect PFCs from each enplaning passenger at airports with an approved PFC project. After collection, airlines are required to remit the PFC revenues monthly to each airport involved. Payment is due not later than the last day of the following calendar month that the PFCs are collected. Each airline must file a quarterly report with each airport for which it collects PFCs to account for the funds collected and remitted, and must establish and maintain a financial management system to account for PFCs. The PFC revenue collected by the airline for the airport is to be regarded as "trust funds" held by the collecting airline as an agent, for the beneficial interest of the airport. (14 CFR §158.49(a))

[12] Collection of PFCs from passengers when those funds are not being turned over to airports as required is also an unfair and deceptive practice under 49 U.S.C. 41712 (*see* Order 96-5-35).

[13] This figure was provided by Kiwi and reflects a repayment of PFCs at Newark, which the carrier was required to do in order to continue to operate at that airport.

[14] By comparison, the highest rate among the major carriers in 1998 was 2.21 complaints per 100,000 passengers.

number of areas and in a decision by the FAA to deny Kiwi the opportunity to increase the complexity of its operations by adding new stations or additional aircraft to its fleet.

Analysis

Kiwi’s failure to remit PFCs to virtually all of its airport authorities is a singularly serious deficiency in its compliance record. It appears that only where an airport has threatened to evict the carrier for nonpayment of debts, including PFCs, has the company made a serious effort to pay down its remittance delinquencies. In addition, it is apparent that Kiwi’s continued financial difficulties and its lack of a strong management team, have eroded its ability to conduct reliable operations, as reflected by the growing number of consumer complaints filed against the carrier, and the disproportionate amount of effort that the FAA is expending on overseeing the safety of the carrier’s operations.

Kiwi's continued nonpayment of PFCs, despite our repeated warnings as to the consequences of such action, demonstrates a serious disregard for applicable Federal requirements. Moreover, absent a substantial infusion of capital and the addition of a strong management team, we are no longer confident that Kiwi has the ability to comply with applicable statutes and regulations. Therefore, we tentatively conclude that Kiwi no longer meets the compliance disposition component of the fitness test.

TENTATIVE FINDINGS AND CONCLUSIONS

On the basis of all of the above, we tentatively find that Kiwi does not continue to be fit to provide the air transportation authorized by its certificate.

Kiwi has material deficiencies, as described above, in all three areas of our fitness inquiry. As a consequence of Kiwi’s critical financial condition, inadequate management, and growing frequency of consumer complaints, the Department, especially the FAA, has had to spend a disproportionate amount of its resources on monitoring Kiwi’s operations. The FAA is particularly concerned over Kiwi’s ability to maintain its aircraft considering its recent complete turnover in senior maintenance staff, lack of spare engines, and lack of spare parts required for routine maintenance.

It is not acceptable to have to continue to rely on the Department’s and the FAA’s resources over a prolonged period of time to assure the performance of duties that are the proper function of an individual airline’s management. We therefore tentatively conclude that Kiwi’s section 41102 certificate should be revoked.

Objections

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth above should not be made final. Answers to objections will be due within 7 days thereafter. We expect persons to direct their objections, if any, to the points at issue and to support such objections with detailed analyses.[15] We will not entertain general, vague or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Kiwi's fitness. If, however, Kiwi corrects the problems that have caused us to reach our tentative conclusion, we will reconsider whether to revoke the carrier's authority.

ACCORDINGLY:

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and revoke the section 41102 certificate issued to Kiwi International Holdings, Inc. d/b/a Kiwi International Air Lines, Inc. by Order 92-9-67.

2. We direct any interested persons having objections to the issuance of an order making final the proposed findings and conclusions and certificate revocation to file their objections with the Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, DC 20590, in Docket OST-97-2684, and serve them upon all persons listed in Attachment A no later than 14 calendar days after the service date of this order; answers to objections shall be filed no later than 7 calendar days thereafter.

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.

4. If no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions and will revoked the section 41102 certificate issued to Kiwi International Holdings, Inc. d/b/a Kiwi International Airlines, Inc.

5. We will serve a copy of this order on the parties listed in Attachment A.

6. We will publish a summary of this order in the Federal Register.

By:

[15] If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary and identify the material issues of decisional fact it would expect to establish through written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedure should be specified (*see* Part 302, Rules 19 and 20); if not, the reasons why not should be explained.

A. BRADLEY MIMS
Acting Assistant Secretary for
Aviation and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov//reports/reports_aviation.asp